IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1520 of 1999

in

SPECIAL CIVIL APPLICATIONNo 2132 of 1999

With
CIVIL APPLICATION NO. 12895 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VELAVADAR DUDH UTPADAK SAHAKARI MANDALI LTD
Versus
RH GADHVI/ ELECTION AUTHORITY

Appearance:
MR N.D. NANAVATI WITH BM MANGUKIYA for Appellants
Addl. Advocate General Mr.S.N. Shelat With Ld. AGP
Mrs. Manisha Lavkumar for Respondents No. 1 to 4
Mr. P.S. Champaneri, Ld. counsel for Res. No. 6 & 7
NOTICE SERVED BY DS for Rest of Respondents
UNSERVED-REFUSED (N) for Respondent No. 19

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 21/02/2000

C A V JUDGEMENT

Per: D.M. Dharmadhikari, C.J. :-

This Letters Patent Appeal under Clause-15 has been preferred against an interlocutory order dated 1st November 1999, passed in Special Civil Applications No. 2132, 2133 and 2134 of 1999; whereby learned Single Judge has vacated the order of ex parte stay or the interim relief granted on 1st November 1999.

2. This Letters Patent Appeal came to be filed in the following background. The appellants nomination papers for election to the Committee of Surendranagar District Co-Operative Milk Producer Union Limited were rejected by the Election Officer. Instead of resorting to the remedy of raising an election dispute to the Tribunal under section 145-U of the Gujarat Co-Operative Societies Act, 1961 (in short the "Act"), the appellants directly approached this Court by way of writ petition, i.e. Special Civil Application No. 2132 of 1999. The ground on which the approach was made in the writ petition to this Court was that, the Election Officer prima facie committed a gross error of law and jurisdiction in rejecting the nominations of the appellants on a date after the scheduled date of scrutiny of the nominations. The nomination papers were rejected behind the back of the appellants and no show cause or hearing was given to them. It is contended that, in the aforesaid circumstances, it was not necessary for the appellants to allow the election proceedings to go on, and to question the election only after declaration of the results. It is submitted that, as a result of rejection of nomination papers of petitioners in Special Civil Applications mentioned above, the other 12 candidates were elected uncontested, and thus, there was a fraud committed by the elected candidates in collusion with the Election Officer.

3. Learned Single Judge had earlier passed an interim ex parte order on 9-4-1999, directing that the delegates of those two newly added petitioner societies

be permitted to contest the election, if their forms were found otherwise acceptable.

4. After notice and hearing both the sides, learned Single Judge by impugned order dated 1st. November 1999 vacated the ex parte order of stay or interim injunction earlier granted, stating that, the Society which the petitioners as members represented for contesting the election to the present Society, had been in the audit classification characterised as "C", hence the petitioners are ineligible to contest the election.

5. Learned Single Judge was of the view that, since the matter of the classification of the Society, which the petitioners represented, was subject of a dispute before the Co-Operative Tribunal, and as the final order by the Tribunal had been passed confirming the "C" category of the Society, the interim relief granted to the petitioners cannot be continued.

6. In this Letters Patent Appeal, without going into the question of maintainability of this appeal against an interlocutory order, we have heard learned counsel Mr. N.D. Nanavati for the appellants and learned Addl. Advocate General appearing for the State.

7. On behalf of the appellants it is strenuously urged that the matter of classification of the Society is sub-judice in the writ petition before this Court against the final order of the Co-Operative Tribunal. Learned counsel for the appellants took this Court to the merits of the writ petition and submitted that, the nomination papers were rejected behind the back of the appellants, much after the date fixed for scrutiny, and this was impermissible under Gujarat Specified Co-Operative Societies Elections To Committees Rules 1982; by which the election procedure is governed. It is submitted that, in view of such patent illegality of law and procedure committed by the Election Officer, there was absolutely no justification for the learned Single Judge to vacate the earlier order of granting interim injunction in favour of the petitioners.

8. Learned Addl. Advocate General in supporting the impugned order of learned Single Judge contends that, as a result of the order of the Tribunal granting Category "C" to the Society, which the petitioners represent, the petitioners are clearly ineligible to contest, and the learned Single Judge was therefore not in error in vacating the earlier ex parte interim relief granted in

favour of the petitioners.

9. We purposely avoid going into the merits of the contentions advanced in the Special Civil Application, because any opinion expressed by us might prejudice the case of either of the parties in the pending litigations. In our considered opinion, in view of the subsequent event of the Society, which the petitioners represent, being characterised as Category "C" and the said action having been upheld by the Co-Operative Tribunal, the learned Single Judge in his discretion could have vacated the earlier ex parte interim injunction order granted to the petitioners. Merely because we may hold a different view, we cannot upset the discretionary order of the learned Single Judge. The discretion has been exercised by the learned Single Judge judiciously, after examining the rival case of the parties. Learned Single Judge was right in coming to the conclusion that, petitioners who are prima facie ineligible to contest cannot be allowed to function as office bearers on the basis of previous election. We are also not impressed by the arguments advanced on behalf of the petitioners that, learned Single Judge could have directed appointment of a custodian through the Registrar in accordance with the provisions of Section 74-D of the Act. That power vests only in the Registrar and it was not open to the Court to issue any direction or mandate to the Registrar by way of any interim relief. After examining the case of the parties and looking to the balance of convenience, learned Single Judge has vacated the ex parte interim order granted in favour of the petitioners. We find no error in the order of the learned Single Judge so as to justify interference by us in this Intra Court Appeal. Consequently the appeal is dismissed, but in the circumstances without any order as to cost. Notice stands discharged.

10. No order in Civil Application No.12895 of 1999, in view of aforesaid order in LPA. Status quo/ interim relief granted in the civil application stands vacated. Notice discharged. No cost.

/vgn

ORDER:

Learned counsel for the appellants made a request that the operation of the orders in the judgment be

stayed for a period of two weeks, to enable the appellants to approach the Supreme Court in appeal. The prayer is opposed. But in view of the prevalent practice of this Court, our orders shall remain in abeyance only for a period of two weeks from today.

Dt: 21-2-2000 (D.M. Dharmadhikari, C.J.)

(C.K. Thakkar, J)